

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. 15-00098 SOM
)	
Plaintiff,)	ORDER REGARDING "NOTICE TO
)	THE COURT"
vs.)	
)	
RUBEN SETTLE,)	
)	
Defendant.)	
)	

ORDER REGARDING "NOTICE TO THE COURT"

This court has received a "Notice To The Court" from Petitioner Ruben Settle. Settle says that he sent a document to this court in error and meant to send it to the Ninth Circuit. He asks this court to hold its proceedings in abeyance pending resolution by the Ninth Circuit of his request for certification of a second or successive motion under 28 U.S.C. § 2255. That request is denied.

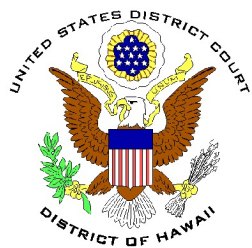
In an earlier ruling, this court noted that, notwithstanding his references to a second or successive § 2255 motion, this court finds no § 2255 motion by Settle in Criminal No. 15-00098 before November 2017. At most, Settle filed a direct appeal in 2015 to the Ninth Circuit. A direct appeal is distinguishable from a § 2255 motion; indeed, a § 2255 motion should not be filed while a direct appeal is pending. The Ninth Circuit ruled on that direct appeal in February 2016, affirming this court's judgment. The November 2017 § 2255 motion is Settle's first § 2255 motion in this case, and this court

accordingly sees no reason to hold anything in abeyance while Settle seeks leave from the Ninth Circuit to file a second or successive § 2255 motion.

While this court does not hold proceedings in this case in abeyance, this court is willing to grant Settle an extension of the deadline for responding to this court's Order To Show Cause Why Defendant Ruben Settle's Motion Under 28 U.S.C. § 2255 Should Not be Dismissed as Untimely. This court had set a deadline of December 29, 2017, but to the extent Settle's "Notice To The Court" seeks more time, this court extends the December 29 deadline a month. Settle's new deadline for responding to the Order To Show Cause is January 29, 2018. Failure to meet that deadline will result in this court's automatic denial of the pending § 2255 motion.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 5, 2017.



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

United States of America v. Settle, Cr. No. 15-00098 SOM; ORDER DEEMING FILING OF NOVEMBER 6, 2017, TO BE MOTION UNDER 28 U.S.C. § 2255; ORDER TO SHOW CAUSE WHY DEFENDANT RUBEN SETTLE'S MOTION UNDER 28 U.S.C. § 2255 SHOULD NOT BE DISMISSED AS UNTIMELY